Stay of the Mandate

No stay of the mandate has been requested as petitioner Clarence Nash has been incarcerated shortly after the mandate issued from the Second Circuit Court of Appeals.

Reasons for Granting a Rehearing

Petitioner Clarence Nash has been effectively denied due process of law because of the undue delay between his indictment and trial, depriving him of a speedy trial and an ample opportunity to obtain counsel, in violation of his rights under the Sixth Amendment of the United States Constitution. This claim was made in the District Court, repeated in the Circuit Court of Appeals and urged upon this Court in the original petition for certiorari. Petition for certiorari was filed in May, 1973, before this Court decided *Strunk* v. *United States, supra*, and a careful review of the *Strunk* decision and its applicability to this case would indicate that petitioner Nash was indicted in June, 1970, and not tried until June, 1972, and was clearly subject to the full force and opinion set forth by this Court in *Barko* v. *Wingo*, 407 U.S. 514, and reaffirmed in the *Strunk* decision. The difference seems to be that Nash, as was co-petitioner *Brown* (72-1527), was a defendant in a multi-defendant narcotic conspiracy case, whereas *Strunk* was indicted for a stolen car. The principles of law should apply to all defendants regardless of whether or not their convictions were for extremely unpopular charges (*i.e.*, narcotics) or less volatile violations (*i.e.*, auto theft).

Facts Concerning this Petition

There are no additional facts concerning this petition for a rehearing except that the law seems to have changed and to have been further amplified in favor of the petition since the *Strunk* case. The Solicitor General, in the answering brief, did not mention the *Strunk* case. However, the Court of Appeals seemed to be concerned with the undue delay argument.

CONCLUSION

For the foregoing reasons, this petition for a rehearing for a writ of certiorari should be granted.

JOSEPH I. STONE
Attorney for Petitioner Nash
Member of the Bar of the Supreme Court of the United States
Office & P.O. Address
277 Broadway
New York, New York 10007

Certification

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

72-1531

CLARENCE NASH,

Petitioner,

—v—

UNITED STATES OF AMERICA,

Respondent.

JOSEPH I. STONE affirms as follows:

(1) That I am an attorney duly admitted to the Bar of the Supreme Court of the United States.

(2) That this petition for rehearing is not frivolous in nature and is certainly not meant to delay as the defendant-petitioner is already incarcerated on this judgment of conviction.

(3) That the issue here is an amplification of the undue delay argument set forth by petitioner in the District Court and the Circuit Court of Appeals as enunciated in the Strunk case (*supra*).

Dated: New York, New York
October 30, 1973

/s/ JOSEPH I. STONE
Joseph I. Stone
Attorney for Petitioner Nash